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8 UNITED STATES BANKRUPTCY COURT

9 EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

10 In re:

11 TULARE LOCAL HEALTHCARE
12 DISTRICT, D/B/A TULARE REGIONAL
MEDICAL CENTER,

13 Debtor(s).

Case No. 17-13797-B-9

Chapter 9

D.C. No. FW-1

Date: August 29, 2019

Time: 9:30 a.m.

14 Place: Dept. B, Courtroom 13, 5th Floor
United States Courthouse
2500 Tulare St., Fresno, California

15 Judge: Hon. René Lastreto, II

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17 **MOTION OF SIEMENS MEDICAL SOLUTIONS USA, INC. FOR ALLOWANCE
AND PAYMENT OF ADMINISTRATIVE EXPENSES PURSUANT TO § 503(b)**

18 Siemens Medical Solutions USA, Inc. ("Siemens"), by its attorney Peter L. Fear,
19 presents this motion ("Motion"), together with the Declaration of Kim Nealy, filed herewith
20 ("Declaration"), for entry of an Order pursuant to section 503(b)(3)(D) of Title 11 of the
21 United States Code ("Bankruptcy Code") (i) allowing Siemens' administrative expense claim
22 ("Administrative Expense Claim") for substantial contributions made to the above-captioned
23 debtor's ("Debtor") chapter 9 bankruptcy case ("Case") and (ii) directing the Debtor to pay
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1 Siemens' Administrative Expense Claim, and for such other and further relief as is
2 appropriate.

3 JURISDICTION

4 1. This Court has jurisdiction pursuant to 11 U.S.C. § 157 and 1334(a). Venue
5 of this case and the Motion in this district are proper pursuant to 28 U.S.C. §§ 1408 and
6 1409.

7 2. The statutory predicate for the relief sought by the Motion is Section
8 503(b)(3)(D) of the Bankruptcy Code.

9 BACKGROUND

10 A. Bankruptcy Proceeding

11 3. On September 30, 2017 ("Petition Date"), the Debtor filed a voluntary petition
12 for relief pursuant to Chapter 9 of the Bankruptcy Code in the United States Bankruptcy
13 Court for the Eastern District of California ("Court").

14 4. On May 22, 2019, the Debtor filed the *Disclosure Statement dated as of April*
15 *30, 2019* (Docket No. 1441) ("Disclosure Statement") and the *Plan for Adjustment of Debts*
16 *Dated as of April 30, 2019* (Docket No. 1440) ("Plan").

17 5. The Debtor is a municipal corporation and healthcare district organized under
18 the Constitution of the State of California, which district encompasses a portion of Tulare
19 County in the State of California. *See* Disclosure Statement at 14.

20 6. The Debtor provides healthcare services primarily to the individuals who
21 reside within the geographic boundaries of the healthcare district. *Id.* The hospital owned
22 and operated by the Debtor ("Hospital") is a "critical component of the overall economic
23 health of the community" and is the only hospital operating within the healthcare district. *Id.*
24 at 3, 14.

1 **B. Agreement Between Siemens and the Debtor**

2 7. Siemens and the Debtor are party to certain Service Agreements (“Service
3 Agreements”) pursuant to which Siemens would perform equipment maintenance services
4 for the Debtor with respect to certain medical equipment (“Covered Equipment”) sold to the
5 Debtor by Siemens. Dec’l ¶6.

6 8. Pursuant to the Service Agreements, Siemens was to provide remedial
7 maintenance service on the Covered Equipment. Dec’l ¶7. The Service Agreements also
8 provide that Siemens would order and supply to the Debtor replacement parts for the
9 Covered Equipment. Pursuant to the Service Agreements, Siemens would also provide
10 scheduled routine maintenance of the Covered Equipment and would maintain and update
11 software associated with the Covered Equipment. *Id.*

12 9. The Service Agreements specify, among other things, the days and times
13 during which servicing would be available to the Debtor, how much time Siemens had to
14 respond to a service call placed by the Debtor, and how quickly Siemens had to provide
15 replacement parts for the Covered Equipment. Dec’l ¶8. The Service Agreements also
16 provided the annual contract price to service the particular piece of Covered Equipment
17 described in the Service Agreement, the monthly installment payments required to be made
18 by the Debtor under the Service Agreement, and the length of the contract term. *Id.*

19 10. The monthly installment payments described in the Service Agreements are
20 intended to compensate Siemens for costs incurred while performing under the Service
21 Agreements. Under the Service Agreements, Siemens had to maintain adequate levels of
22 staffing in order to respond to telephonic or in-person service calls placed by the Debtor, all
23 within the time frames prescribed in the Service Agreements. Dec’l ¶9. Siemens was also
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1 responsible to perform routine, scheduled maintenance under the Service Agreements, the
2 costs of which were covered by the monthly installment payments set forth therein. *Id.*

3 **C. Siemens' Pre-Petition Date Claim**

4 11. As of the Petition Date, the Debtor owed Siemens \$93,844.67 for unpaid
5 installment payments due and owing under the Service Agreements before the Petition Date,
6 as well as for charges for labor and materials provided to the Debtor before the Petition Date,
7 as described in the Proof of Claim filed by Siemens on April 6, 2018 (Claim No. 199-1).

8 **D. Post-Petition Period**

9 12. Upon information and belief, the Debtor ceased operations at and closed the
10 Hospital in or around October, 2017. Siemens did not receive notice at the time that the
11 Hospital's operations had been suspended. Dec'l ¶11. Further, no notice was filed on the
12 bankruptcy docket to inform creditors that the Hospital had stopped operating. Indeed, even
13 the Debtor's Disclosure Statement does not provide the exact date of the Hospital's closure
14 and the implications thereof. The Hospital officially re-opened to the public on October 15,
15 2018. Disclosure Statement at 23.

16 13. In the period following the Petition Date ("Post-Petition Period"), the Debtor
17 entered into a complex transaction with Adventist Health System/West ("Adventist Health"),
18 whereby Adventist Health agreed to, among other things, enter into a lease with the Debtor
19 for the Hospital, to purchase certain medical equipment and supplies from the Debtor, and to
20 assume responsibility for the Hospital's operations and financial liabilities. Disclosure
21 Statement at 23. Adventist Health assumed responsibility for the Hospital's operations on
22 March 15, 2019. *Id.*

23 14. During the Post-Petition Period, including during the period of time that the
24 Hospital had ceased operations ("Shutdown Period"), Siemens continued to provide services

1 to the Debtor in accordance with the terms of the Service Agreements for three pieces of
2 Covered Equipment. Dec'l ¶14. Copies of the Service Agreements for the Covered
3 Equipment maintained during the Post-Petition Period are attached to the Declaration as
4 Exhibit A.

5 15. During the Post-Petition Period, Siemens provided routine, scheduled
6 maintenance to the Covered Equipment, as well as on-site visits in response to service calls
7 placed by the Debtor. During the Post-Petition Period, Siemens responded to approximately
8 forty-one service calls with respect to the Covered Equipment, twenty-four of which were
9 made during the Shutdown Period. Siemens also maintained the staff necessary to respond to
10 service calls, either by phone or in person, placed by the Debtor during the times prescribed
11 by the Service Agreements. Dec'l ¶19. A copy of the log of service calls placed by the
12 Debtor with respect to the Covered Equipment during the Post-Petition Period is attached to
13 the Declaration as Exhibit B.

14 16. Accordingly, during the Post-Petition Period, Siemens continued to invoice
15 the Debtor for the monthly installment amounts owed pursuant to the terms of the Service
16 Schedules, as well as for labor and replacement parts necessary to complete certain repairs
17 made to the Covered Equipment, during the Post-Petition Period. Dec'l ¶16.

18 17. The unpaid invoices provided to the Debtor during the Post-Petition Period for
19 services rendered under the Service Agreements are attached to the Declaration as Exhibit C.

20 18. In addition, during the Shut-Down Period, Siemens provided repair services to
21 the Debtor with respect to an ultrasound machine not covered by a Service Agreement
22 ("Excluded Equipment" and together with the Covered Equipment, the Equipment). Dec'l
23 ¶18. During the Post-Petition Period, Siemens responded to two service calls with respect to
24 the Excluded Equipment and submitted Invoice No. 200925145 to the Debtor for time and

1 materials to repair the Excluded Equipment (“Excluded Invoice”). Id. A copy of the
2 Excluded Invoice is attached to the Declaration as Exhibit D.

3 19. Siemens is owed \$123,766.29 for services, labor and materials provided to the
4 Debtor during the Post-Petition Period. Dec’l ¶19.

5 ARGUMENT

6 A. Bankruptcy Code Section 503(b)(3)(D) Provides Administrative Priority Status for 7 Substantial Contribution Claims

8 20. Bankruptcy Code Section 503(b)(3)(D) provides that “[a]fter notice and a
9 hearing, there shall be allowed, administrative expenses . . . including the actual, necessary
10 expenses . . . incurred by . . . a creditor . . . in making a substantial contribution in a case
11 under chapter 9 or 11 of this title...” 11 U.S.C. § 503(b)(3)(D).

12 21. A creditor seeking payment of an administrative expense pursuant to section
13 503(b)(3)(D) must show that the expenses were incurred “in an endeavor that provided
14 tangible benefits to the bankruptcy estate and the other unsecured creditors.” *In re Sedona*
15 *Institute*, 21 Fed. Appx. 723, 724 (9th Cir. 2001) (internal quotations omitted); see *also In re*
16 *Legacy Estate Grp., LLC*, No. 05-14659, 2006 WL 3392068 at *2 (Bankr. N.D. Cal. Nov. 20,
17 2006) (“In determining whether there has been a ‘substantial contribution’ pursuant to
18 section 503(b)(3)(D), the applicable test is whether the efforts of the applicant resulted in an
19 actual and demonstrable benefit to the debtor’s estate and the creditors.”). “Services which
20 substantially contribute to a case are those which foster and enhance, rather than retard or
21 interrupt the progress o[f] reorganization.” *In re Cellular 101, Inc.*, 377 F.3d 1092, 1097 (9th
22 Cir. 2004) (quoting *In re Consol. Bancshares, Inc.*, 785 F.2d 1249, 1253 (5th Cir. 1986)).

B. Siemens has an Administrative Expense Claim for Expenses Incurred in Making a Substantial Contribution to the Case

22. Siemens has provided a substantial contribution to the Case during the Post-Petition Period by providing critical repair services for the Equipment. The Debtor is a provider of healthcare and medical services to the general public and would be unable to provide such services without routine and essential maintenance performed to the Equipment. The Equipment is comprised of ultrasound machines and Computed Tomography (CT), machines that are used regularly in hospitals to provide patient care.

23. By continuing to provide service and maintenance to the Equipment, Siemens provided a benefit to the Debtor's other creditors. Without functioning Equipment, the Hospital would be unable to provide testing and diagnostics to its patients and therefore would be unable to collect revenues for providing common procedures to its patients. In keeping the Equipment in good repair, Siemens allowed the Hospital to continue performing revenue-generating services for its patients.

24. The services provided by Siemens also provided a substantial contribution during the Shutdown Period, notwithstanding that the Hospital was not providing care to patients during that time. The service calls answered by Siemens, as well as the routine, scheduled maintenance provided by Siemens, kept the Equipment in working order during the Shutdown Period. Without well-maintained and functioning Equipment, the Hospital's re-opening may well have been delayed. Further, had the Hospital re-opened without well-maintained and functioning Equipment, the Hospital would have been subject to the same risk of decreased revenues described above.

25. By continuing to provide services to the Debtor, Siemens also assisted with the Debtor's reorganization efforts: as part of the Debtor's restructuring, Adventist Health

1 agreed to lease the Hospital and assume responsibility for the operations at the Hospital. By
2 maintaining and repairing the Equipment during the Post-Petition Period, Siemens
3 maintained the value of the Equipment at the Hospital, in turn allowing the Debtor to derive
4 greater value from the lease and sale transaction with Adventist Health.¹

5 26. Siemens is entitled to receive payment of the full amount of the
6 Administrative Expense Claim because it represents the expenses incurred by Siemens to
7 maintain adequate levels of staffing to respond to the Debtor's telephonic or in-person
8 service calls and to provide the necessary routine maintenance to the Covered Equipment.
9 The Administrative Expense Claim also represents the actual cost of labor and materials
10 incurred by Siemens in providing service to the Covered Equipment pursuant to the terms of
11 the Service Agreements and to the Excluded Equipment during the Post-Petition Period.

12 27. Finally, it is essential that important post-Petition Date service providers like
13 Siemens are entitled to administrative priority under Bankruptcy Code section 503.
14 Otherwise, by treating service-providers like Siemens like any other general unsecured
15 creditor with a pre-petition claim, critical service providers in future cases filed under
16 Chapter 9 of the Bankruptcy Code will be unwilling and unlikely to continue providing
17 necessary services integral to a municipal debtor's operations after such a municipal debtor
18 files for relief if they are subject to be treated like all other general unsecured creditors,
19 uncertain of being fully compensated for their services.

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23 ¹ Siemens is not aware of whether the Equipment was sold in connection with the Adventist Health transaction
24 because, to the best of its knowledge, there is no complete and publicly posted version of an executed asset
purchase agreement with Adventist Health. Further, there is no mention in the Disclosure Statement regarding
when the sale to Adventist Health closed. Dec'1 ¶13

1 **C. Siemens is Entitled to Immediate Payment of its Administrative Expense Claim**

2 28. The decision about when administrative expenses will be paid lies within the
3 discretion of the bankruptcy court. *In re Steiny and Company, Inc.*, No. 1:16-bk-25619-WB,
4 2017 WL 1788414 at *4 (C.D. Cal. May 3, 2017) (citing *In re Verco Indus.*, 20 B.R. 664,
5 665 (B.A.P. 9th Cir. 1982).

6 29. Immediate payment of Siemens' Administrative Expense Claim is warranted
7 in this Case because Siemens provided a substantial contribution to the Debtor's Case by
8 providing critical maintenance and repair services for the Debtor's Equipment, which in turn
9 allowed the Debtor to continue providing healthcare services to the healthcare district.

10 30. Accordingly, Siemens seeks immediate payment from the Debtor of the
11 Administrative Expense Claim or, in the alternative, payment at such other time as the
12 Debtor's other administrative claimants are paid.

13 **NO PRIOR MOTION**

14 31. Siemens has not made any prior motion or application for the relief sought
15 herein to this Court or to any other court. Siemens expressly reserves its rights to seek such
16 other relief as deemed appropriate.

17 **NOTICE**

18 32. Notice of the Motion has been given to counsel for the Debtor, the United
19 States Trustee, the Debtor's twenty largest creditors, and all parties requesting service in this
20 case.

21 WHEREFORE, Siemens respectfully requests this Court to enter an Order allowing
22 Siemens' Administrative Expense Claim and directing the Debtor to pay the Administrative
23 Expense Claim, and for other and further relief as is appropriate under the circumstances.
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1 Date: 7/30/2019

FEAR WADDELL, P.C.

2 By: /s/ Peter L. Fear
3 Peter L. Fear